

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRI N. ROBERTS and U.S. POSTAL SERVICE,  
POST OFFICE, Beaverton, Oreg.

*Docket No. 96-1452; Submitted on the Record;  
Issued October 8, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a lower back condition in the performance of duty, causally related to factors of her federal employment.

On October 11, 1994 appellant, then a 36-year-old distribution clerk, filed a Form CA-2 claim for benefits based on occupational disease, claiming that she began to experience pain in her lower back in June 1994 caused by a sudden change in working conditions. Specifically, appellant asserted that the mail volume in her office increased and that she was consequently required to work in a sedentary position for long, extended periods during the day, processing mail and lifting heavy trays or tubs of mail while sorting third class mail and pushing/pulling carts. Appellant claimed that this change in her working conditions resulted in the injury to her lower back.

By letter dated October 14, 1994, appellant's supervisor at the employing establishment contradicted appellant's version of events. The supervisor stated that appellant did not tell her until September 19, 1994 that she was experiencing pain in her back and that she was going to her doctor. Appellant's supervisor then stated that she asked appellant whether her back pain could have been caused by her employment, but that appellant responded that she was unaware as to the cause of the back pain, and that it was not caused by her employment. The supervisor stated that she arranged for an investigative interview on October 11, 1994 with appellant due to her increasingly poor attendance, during which appellant told her for the first time that her back had been hurting since June 1994 as a result of sitting at work, and that her physician had diagnosed her condition as bone tension in the lower back. According to the supervisor's letter, appellant claimed that she did not initially report the back injury because she thought her condition would improve.

By letter dated October 19, 1994, appellant responded to the supervisor's letter, asserting that while working in the stamps by mail unit she was forced to sit for too long a period, six to eight hours at a time and was also forced to stand and sort flats for one to eight hours per day and

push and pull carts and lift trays all day long. She also claimed that she took two weeks vacation, from July 5 to July 15, 1994, in order to rest at her home due to her back injury and illness. Appellant stated that she returned to work after her vacation but that she began to reexperience pain in her lower back. As a result, appellant claimed, she went to her treating physician, Dr. Daniel A. Risser, a Board-certified family practitioner, who gave her a note allowing her to take two weeks sick leave and rest her back, from August 1 to August 12, 1994. Finally, appellant claimed that she mentioned to her immediate supervisor that she had this illness and back injury in June 1994 and that she requested her to have a coworker input orders so there would be less “pressure” at work.

In response to appellant’s October 19, 1994 letter, appellant’s immediate supervisor submitted another letter to the Office dated October 24, 1994 in which she categorically contradicted appellant’s account of events regarding an alleged back condition caused by an alleged change of working conditions in June 1994. The supervisor stated that many of the facts that appellant alleged occurred during that period were inconsistent with her personal notes and official time and leave records. Specifically, the supervisor denied appellant’s allegation that she told her about her back pain on several occasions in June 1994. The supervisor confirmed that appellant was placed into the stamps by mail unit on June 6, 1994 to help out another coworker, but that at no time thereafter did she state to her that she was experiencing any type of back pain. The supervisor stated that the amount of lifting in the stamps by mail unit was minimal, that there was no required lifting of the boxes once they were brought into the unit and that she had never known appellant to miss a break no matter how heavy the work load.

Appellant’s supervisor further stated that when appellant did begin to request sick leave, the reasoning she gave in support of the request was that she had been experiencing depression and discomfort from menopause, not lower back pain. The supervisor stated that appellant had submitted two clinical notes from her physicians, Dr. James M. Thomas, a specialist in gynecology, and Dr. Risser, dated July 28 and July 30, 1994, which indicated that she needed two weeks off from work to adjust to her new medications.<sup>1</sup>

In a letter to appellant dated December 1, 1994, the Office requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office requested that appellant provide a diagnosis and clinical course of treatment for the injury, noting that although her doctor completed the Form CA-16, the diagnosis he provided on it was insufficient to establish that appellant had suffered an injury caused or aggravated by employment factors. The Office further requested that appellant describe in detail the employment-related activities which she believed contributed to her condition, how often she performed the above described activities and for approximately how long. Appellant was instructed to send a copy of this information to her employer for concurrence. The Office informed appellant that she had 30 days to submit the requested information.

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<sup>1</sup> Dr. Thomas’ July 28, 1994 note indicated appellant was having a “severe problem” with her emotions and needed two weeks off to get her medications active.

On February 16, 1995 Dr. Risser submitted a Form CA-20 in which he gave a history of appellant sustaining a lower back injury beginning in June 1994 when mail volume increased and she “sat all day inputting and filing stamps by mail.” Dr. Risser diagnosed a sacroiliac sprain bilaterally and a lumbosacral sprain, and indicated that the condition found was caused or aggravated by an employment activity, stating that prolonged sitting plus lifting trays of mail, reaching and pushing caused the lumbosacral sprain injuries. Dr. Risser further noted that appellant was currently limited to four hours per day.

By letter dated March 6, 1995, the Office asked Dr. Risser to submit a medical opinion regarding whether the specific factors of appellant’s federal employment contributed to her back condition and to explain how such factors caused the injury.

In response to the Office’s March 6, 1995 letter, Dr. Risser submitted a letter dated March 13, 1995 in which he stated “[appellant] relates onset of her lumbosacral pain to early June 1994 when she was required to handle an increased load of orders. This involved reaching and lifting boxes of mail. Although there was no specific date of injury, she noted that after the period of increased work load, she continued to have low back pains. The position she had at the employing establishment clearly increased the pain in her back. Repetitive reaching, bending and even relatively light lifting in the range of five to eight pounds caused increasingly severe pains in her lumbosacral back. In my opinion, this is the major causative factor of [appellant’s] ongoing back problem.” Dr. Risser noted that appellant had personal stress which was a contributing factor to her back soreness, but he emphasized that this was not the major causative factor. Dr. Risser acknowledged that menopause was an emotional and physical cause of stress, but he stated that it was not a direct cause of her back pains and symptoms.

Dr. Risser stated:

“Specifically, reaching and bending stretch the muscles and ligaments and the low back, this causes pain in someone who has experienced overwork or sprain injury of the lumbosacral area. Twisting or rotating further increases pain particularly in the sacroiliac joint areas which [appellant] has had considerable pain. Although her recovery has been frustratingly gradual initially, she now is doing considerably better working half time and I anticipate she will return to full-time work within the next month. There is the possibility of exacerbation with relapse in symptoms, temporary pain and disability, however, whether or when this may occur cannot be predicted. I do recommend that [appellant] continue the once weekly chiropractor treatments which have been beneficial for her.”

By decision dated April 26, 1995, the Office found that fact of injury was not established, as appellant failed to submit sufficient evidence to support appellant’s claim that she sustained a lower back injury in June 1994 as alleged. In an accompanying memorandum to the Director, the claims examiner stated that appellant’s October 19, 1994 statement indicating that her low back condition began in June 1994 due to an increased work load in June 1994 was not in accord with the official records of the employing establishment. The Office further indicated that Dr. Risser’s opinion regarding causal relationship lacked probative value because it was based on appellant’s inaccurate history, not on objective findings from June 1994. The Office therefore denied the claim.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

In the present case, the Board initially finds that the Office erred in finding that appellant did not meet her burden of submitting sufficient evidence to establish that she experienced the employment incident at the time, place and in the manner alleged. As the Board has stated, an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, an appellant's statement alleging that an

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.<sup>6</sup>

In the present case, the employing establishment controverted appellant's claim that she began to experience back pain caused by employment factors in June 1994. Appellant's supervisor denied that appellant told her about her back pain on several occasions in June 1994, denied that her transfer to the stamp by mail unit on June 6, 1994 resulted in an increased work load which resulted in appellant's alleged back injury, and asserted that her stated reason for requesting sick leave at that time was for depression and discomfort from menopause, not lower back pain. However, the Board finds that these statements do not constitute probative evidence sufficient to rebut appellant's claim that she sustained a lower back injury while in the course of her employment, beginning with her transfer to the stamp by mail department in June 1994. Based on the above set of facts, therefore, the employing establishment has not met its burden to submit substantial evidence to rebut the presumption that the employee sustained an injury at the time, place, and in the manner alleged.<sup>7</sup> The Office's finding in this regard is therefore set aside.

In addition, appellant has submitted supporting medical evidence in the present case; *i.e.*, the March 19, 1995 report from Dr. Risser, who indicated that she began to experience severe lumbosacral pains in June 1994, when she was transferred to the stamps by mail position, and that these pains were caused by the repetitive reaching, bending and light lifting required by this new job. Dr. Risser specifically indicated in this report that appellant suffered from overuse syndrome due to increased responsibilities in her new job, stating that the reaching and bending entailed by the job stretched the muscles and ligaments in the lower back, causing pain in someone who has experienced overwork or sprain injury of the lumbosacral area, and that twisting or rotating further increased pain in the sacroiliac joint areas where appellant had experienced considerable pain.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.<sup>8</sup> Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's lumbosacral overuse syndrome and her specific employment duties, and is sufficient to require further development of the case record by the Office.

On remand, therefore, the Office should further develop the medical evidence by requesting that Dr. Risser submit a rationalized medical opinion on whether appellant's lumbosacral overuse syndrome is causally related to identified factors of her federal employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>6</sup> See Erik J. Koke, 42 ECAB 412 (1991); Carmen Dickerson, 36 ECAB 409 (1984).

<sup>7</sup> *Id.*

<sup>8</sup> John J. Carlone, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated April 26, 1995 is set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
October 8, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member